

Brigham Young University Law School
BYU Law Digital Commons

Utah Court of Appeals Briefs (2007–)

2016

**The State of Utah, Plaintiff/ Appellee v. Joseph Trujillo, ,
Defendant/ Appellant.**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Reply Brief, *Utah v Trujillo*, No. 20150779 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3623

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee :
v. :
JOSEPH TRUJILLO, : Case No. 20150779-CA
Defendant/Appellant. : Appellant is not incarcerated.

REPLY BRIEF OF APPELLANT

Appeal from a restitution order following a guilty plea to failure to respond to an officer's signal to stop, a third degree felony, Utah Code § 41-6a-210, in the Third Judicial District, in and for Salt Lake County, Utah, the Honorable Katie Bernards-Goodman presiding.

NATHALIE S. SKIBINE (14320)
ANDREA J. GARLAND (7205)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Appellant

LAURA B. DUPAIX (5195)
Assistant Attorney General
SEAN D. REYES (7969)
ATTORNEY GENERAL
Heber M. Wells Building
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114
Attorney for Appellee

FILED
UTAH APPELLATE COURTS

APR 04 2016

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee :
v. :
JOSEPH TRUJILLO, : Case No. 20150779-CA
Defendant/Appellant. : Appellant is not incarcerated.

REPLY BRIEF OF APPELLANT

Appeal from a restitution order following a guilty plea to failure to respond to an officer's signal to stop, a third degree felony, Utah Code § 41-6a-210, in the Third Judicial District, in and for Salt Lake County, Utah, the Honorable Katie Bernards-Goodman presiding.

NATHALIE S. SKIBINE (14320)
ANDREA J. GARLAND (7205)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Appellant

LAURA B. DUPAIX (5195)
Assistant Attorney General
SEAN D. REYES (7969)
ATTORNEY GENERAL
Heber M. Wells Building
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114
Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
ARGUMENT.....	1
Abandonment of a vehicle is not part of this case.....	1
CONCLUSION	5
CERTIFICATE OF COMPLIANCE	5
CERTIFICATE OF DELIVERY	6

TABLE OF AUTHORITIES

Cases

<i>State v. Brown</i> , 2009 UT App 285, 221 P.3d 273	5
<i>State v. Harvell</i> , 2009 UT App 271, 220 P.3d 174.....	5
<i>State v. Larsen</i> , 2009 UT App 293, 221 P.3d 277.....	5
<i>State v. Ludlow</i> , 2015 UT App 146, 353 P.3d 179	7
<i>State v. Robinson</i> , 860 P.2d 979 (Utah Ct. App. 1993).....	6

Statutes

Utah Code § 41-6a-1408.....	6
Utah Code § 77-38a-302.....	6, 7
Utah Code § 78A-8-102	7

Rules

Utah R. App. P. 24.....	4
-------------------------	---

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee :
v. :
JOSEPH TRUJILLO, : Case No. 20150779-CA
Defendant/Appellant. : Appellant is not incarcerated.

INTRODUCTION

As required by Utah Rule of Appellate Procedure 24(c), this reply brief is “limited to answering any new matter set forth in the opposing brief.” The brief does not restate arguments from the opening brief or address matters that do not merit reply.

ARGUMENT

Abandonment of a vehicle is not part of this case.

The State argues that “the car would not have been impounded were it not for Defendant’s failure to stop and subsequent abandonment of the vehicle.” State’s Brief (SB) 6, 7, 9, 11. The State consistently presents the failure to stop and the abandonment of a vehicle in tandem, but the latter is doing one hundred percent of the work. If anything, the failure to stop is working against the causal link the State strives to forge: a vehicle cannot easily be impounded if it is not stopped. On the other hand, an abandoned vehicle might be impounded regardless of its history. It cannot be plausibly maintained

that \$2,500 in impound fees “would not have occurred but for the conduct underlying the defendant’s conviction” for failure to stop. *State v. Brown*, 2009 UT App 285, ¶ 11, 221 P.3d 273.

And there is nothing but the district court prosecutor’s argument in the record to support that Mr. Trujillo “abandoned the vehicle.” SB 7, 6, 9, 11. As the State acknowledges, even when there is an inference that the defendant is responsible for criminal conduct, that inference is insufficient for a restitution award. SB 10-11. “[T]he [restitution] statute requires that responsibility for the criminal conduct be firmly established, much like a guilty plea, before the court can order restitution.” *State v. Harvell*, 2009 UT App 271, ¶ 9, 220 P.3d 174 (internal quotation marks omitted). A “defendant cannot be ordered to pay restitution for criminal activities for which the defendant did not admit responsibility, was not convicted, or did not agree to pay restitution.” *State v. Larsen*, 2009 UT App 293, ¶ 6, 221 P.3d 277 (internal quotation marks omitted). The single record citation the State provides to support its assertion that Mr. Trujillo abandoned a vehicle is the argument section of the prosecutor’s objection to defendant’s motion to set aside judgment. SB 7 (citing R. 81), 9 (citing R. 81), 11 (no record citation). The sentence in the prosecutor’s argument that appears in the record is unsupported by any additional citation, addendum, or exhibit. R. 81. The State does not cite the portions of the record which lay out the charged crime, R. 1; the plea bargain, R. 28-29; or Mr. Trujillo’s statements to the sentencing court, R. 113. This is because there is nothing in those portions of the record addressing the abandonment or impoundment of a vehicle.

Furthermore, the State does not assert now, and did not assert below, that abandonment was “criminal activity,” which is a necessary component of criminal restitution. Utah Code § 77-38a-302(1) (“When a defendant is convicted of criminal activity that has resulted in pecuniary damages . . . the court shall order that the defendant make restitution to victims of crime”); see *State v. Robinson*, 860 P.2d 979, 983 (Utah Ct. App. 1993) (“Despite the fact that the traffic laws of this State are codified within the criminal code, a restitution order will generally be inappropriate in a matter arising from a traffic violation that involves only negligence, and not criminal intent.”).¹ Abandoning a vehicle can be an infraction under Utah Code section 41-6a-1408. But Mr. Trujillo was not charged with it and never admitted or agreed to pay restitution for it. R. 1. There is nothing in the record, even including the prosecutor’s colloquial use of the term in her argument, that indicates Mr. Trujillo met the elements of that crime: leaving a vehicle “on a highway . . . for a period in excess of 48 hours” or “on public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.” *Id.*

¹ Although the prosecutor below appeared to base much of her argument on the unsupported allegation that the car was stolen, the State has abandoned this theory on appeal. Compare R. 110 (“So on the fleeing case, he was in a stolen car. That car was impounded. The victim wants to get it out of impound but can’t afford it. So we would ask for restitution on that case.”), with SB 6 (“Regardless of whether Defendant stole the car, the car would not have been impounded were it not for Defendant’s failure to stop and subsequent abandonment of the vehicle.”), 9 (“That Defendant did not plead guilty to an offense involving his knowledge that he was in possession of a stolen motor vehicle is irrelevant.”).

In summary, the activity the State alleges caused damages — abandonment of a vehicle — was not charged, admitted, or even criminal. It was an issue for small claims court, not criminal restitution. *See* Utah Code § 78A-8-102(1).

Finally, the State writes that Mr. Trujillo “did not challenge the accuracy of the restitution amount.” SB 4 (citing R. 65). But on the page of the record the State cites, Mr. Trujillo moved the court to set aside the \$2,500 restitution judgment “on the grounds that the judgment is illegal and the restitution amount is likely more than the car is worth.” R. 65. The State further faults Mr. Trujillo for “never challeng[ing] the amount of the restitution award by asking for an evidentiary hearing or other evidentiary proffer relating to the amount awarded.” SB 4. But the Restitution Act requires only an objection: “If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.” Utah Code § 77-38a-302(4). “It is the responsibility of the prosecutor to calculate ‘the actual or estimated amount of restitution.’” *State v. Ludlow*, 2015 UT App 146, ¶ 11, 353 P.3d 179 ¶ 11 (quoting Utah Code § 77-38a-202(1)-(2)). Mr. Trujillo objected to the imposition and the amount of restitution twice: at the sentencing hearing and in a motion to set aside the judgment. R. 112-13; 65-66. This Court may therefore take into account that the \$2,500 figure was completely unsupported and, as the prosecutor called it, “ridiculous.” R. 110; *see* R. 112-13; 65-66; Opening Brief 8-9.

CONCLUSION

For the reasons above and in the opening brief, Mr. Trujillo respectfully requests that this court reverse and set aside the district court's order of restitution.

SUBMITTED this 4th day of April, 2016.



NATHALIE S. SKIBINE
Attorney for Defendant/Appellant

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(1)(1), I certify that this brief contains 1,088 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. Ap. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Times New Roman 13 point.



NATHALIE S. SKIBINE

CERTIFICATE OF DELIVERY

I, NATHALIE S. SKIBINE, hereby certify that I have caused to be hand-delivered an original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and three copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 4th day of April, 2016



NATHALIE S. SKIBINE

DELIVERED to the Utah Attorney General's Office and the Utah Court of Appeals as indicated above this 4 day of April, 2016.


